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January 8, 2003

Mr. William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20002

EX PARTE FILING

RE: Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98

Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Appropriate Framework for Broadband Access to the Internet over Wireline Facilities. CC Docket No. 02-33

Dear Mr. Maher:

I would like to offer our thanks to you and the Bureau staff for taking the time to meet with us on December 20,2002. We understand the tremendous demands upon your time, and hope that we are offering a constructive framework for analyzing the complicated and important issues before you.

In our letter to you of December 17, 2002, we set forth four points upon which a policy to promote the development of effective, facilities-based competition should he based:

The Telecommunications Network and Product Applications are Highly Integrated. Modern network infrastructure has technologically become an integrated whole supporting all types of voice and data services, including **but** not limited to broadband, local voice and long distance services. Denying or limiting access to necessary elements of the integrated network of the incumbent local exchange carrier will prevent competitive carriers from offering viable long-term solutions to their customers.

"Last Mile" Loop Connections To Customers Cannot Realistically Be Duplicated. Duplicating these connections would require an investment of hundreds of billions of dollars and take decades. For competition to thrive,

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competitors must continue to have full and equal access to these loop facilities, regardless of whether the customer demands narrowband or broadband applications.

Unbundled Transport Counections Are Critical. Since cost effective and quality alternatives are not widely available, competitive carriers must rely on RBOCs for that transport. For example, approximately 90% of our purchased/leased circuits are obtained from an RBOC. Continued availability of RBOC transport as a UNE is necessary to our facilities-based operations.

Pricing for Network Elements Provided by Incumbent Carriers Should be Based on TELRIC. The TELRIC standard was developed to provide fair compensation to incumbent carriers for providing access to their networks, and has been tested and upheld by the Supreme Court. TELRTC continues to provide a reasonable and flexible method for pricing access to both existing infrastructure and new investment.

In conjunction with these four points, it is vital that clarity and certainty be key elements in any policy adopted by the Commission. Clarity about the obligations and duties of incumbent carriers and competitors will allow companies to execute their business plans, allowing for increased infrastructure investment and innovation in services for customers. Adoption of broad policy and definitional changes without complete underlying details will introduce more uncertainty into the industry at a time when exactly the opposite is needed.

In this letter, we would like to expand on two points related to our filing of December 17, 2002: how regulatory policy can support investment in the network infrastructure, and how to evaluate proposals for change based on using a "snapshot" of existing network capacity as **a** baseline for setting access obligations.

1. Access to the Integrated Network Will Stimulate Investment in Network Infrastructure.

Customer connections are based on an integrated network for both voice and data. There is only one set of copper loops, copper and fiber distribution plant, huts, terminals, power supplies, etc., which comprise a single integrated network[1] able to support the range of integrated products and services demanded by the market.[2] Attempts to

[1] In this document. we use the term "network' to refer to the fabric of customer connections and transport that carry traffic from location to location, and equipment ancillary lo those connections and transport. We do not include local switching within this definition of "network".

[2] For example. the Illinois Commerce Commission, the Texas Public Utilities Commission, and the Wisconsin Public Service Commission have rejected the argument that SBC's "Project Pronto" architecture represents a new "overlay" on the existing network. Illinois CC Docket No. 00-393; Texas PUC Docket Nos. 22168/22469; Wisconsin PSC Docket No. 6720-TI-161. The Wisconsin Commission specifically found that the purpose of the investment in the integrated Project Pronto facilities was to "realize the efficiencies of combining voice and data . . ."

differentiate the network into separate broadband and narrowband segments for purposes of regulating access simply do not reflect the reality of the network today.'

Broadband applications are a perfect example of this. Within today's integrated telecommunications network, the difference between elements required to support traditional "voice" services and broadband services lies principally in the line cards placed within a particular digital loop carrier system, and in the type of switch port (e.g., circuit or packet switching) to which the customer's line is connected. Broadband functionality flows from the configuration of equipment connected to the network, not from the network lines themselves. Thus, broadband is simply a particular application provided over an integrated network.

The existence of a separate cable network should not affect the treatment of the integrated wireline network. The wireline network has always been treated differently than the cable network with respect to obligations to provide access to facilities.[4] This is because the highly integrated and pervasive nature of telecommunications networks, developed under a common carrier obligation and ubiquitously serving both residential and business customers, differs fundamentally from the more specialized networks supporting cable systems. Those networks have traditionally not supported two-way services; and while cable systems in some markets are being modernized to do so, they remain today fundamentally different from wireline networks, both in terms of function and in terms of legal obligations related to the underlying facilities. **And** it is likely that cable will not represent a meaningful two-way service alternative for many years, certainly outside the residential market.

Incumbent carriers have asked to be relieved of the obligation to provide access to network elements used to support "broadband" services. Unfortunately, such separable network elements used only for broadband applications largely do not exist; and their request could lead to limitations on access to the integrated network itself.[5] If ILECs are permitted to economically or operationally limit access to their integrated network, real and vigorous competition for integrated services will have been sacrificed. Essentially, policy makers are being asked to exchange effective and sustainable competition in integrated telecommunications services for duopoly "competition" in a single network

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[3] This view of the network has implications lor issues such **as** line sharing. We believe that the defmition o i line sharing **as a** separate network element is at odds with an integrated view of the network. This particular issue is complicated, however, **by** the fact the RBOCs typically "line share" with their own broadband affiliates without recovering any of their loop costs from those broadband affiliates.

[4] *In RE. Inquiry Concerning High-Speed* **Access** *io the Internet* **Over** *Cable and Other Facilities,* "Declaratory Ruling and Notice of Proposed Rulemaking", GN Docket No. 00-185, CS Docket No, 02-52 (March 15, 2002) (*"Cable Modem Decision"),* Par. 44.

[5] Because of the integrated nature of the network, virtually all components can be used for broadband services. **As** a result, the door is npen to interpretive expansion of any list of "exempt" network elements hcyond those truly limited to "broadband" applications . Thus, such an exception could effectively swallow the unbundling obligation.

application – broadband service. Trading competition by wireline providers in the integrated telecommunications market in order to "level the playing field" between ILECs and cable companies in the broadband "market" is a poor exchange for consumers.

McLeodUSA fully appreciates that its access to network infrastructure must come at a price. Carriers seeking access to integrated network infrastructure must fairly compensate ILECs for that access. The TELRIC methodology adopted unanimously by the Commission in 1996 is a fair and effective tool for determining prices for access to coinponcnts of the integrated network. TELRIC is the tool used over the past six years in hundreds of stale commission decisions closely analyzing network costs. Inherent in the TELRIC methodology is the flexibility to reflect changing uses (and risks) as the integrated network and thc market evolves. McLeodUSA believes that current TELRIC rulcs can and do promote investment in the integrated network.

Incumbent carriers have argued that there is effective competition with cable service providers, and that the requirement that ILECs – but not cable companies – provide access to "broadband" infrastructure makes it uneconomic for them to invest. These arguments are fundamentally inconsistent with each other: If there is effective competition, then investment should flow into the facilities needed to compete. If the response to this is that "loop prices are too low to support the investment", then the issue is really pricing, and not access to the services themselves.[6] If pricing is the real issue, then that is where the debate should be focused.'

If the FCC determines that adjustments to its pricing rules are necessary to increase investment in the integrated network, TELRIC remains the best tool. The Commission's TELRIC methodology could be clarified to direct state commissions to consider whether the risks associated with the equipment providing integrated (including broadband) services warrants an increase in the rate of return used to calculate the TELRIC price for the relevant network element, or whether the expected life and salvage characteristics associated with the equipment warrants an increase in the depreciation rate.[8]

The goal of such adjustments would be *to* ensure, within the TELRIC framework, that facilities-based competitors pay a fair price for network elements purchased from incumbents, and incumbents receive fair compensation for the use of their facilities. Neither side in the debate should expect any other result. This even-handed approach

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[6] Of course, undercutting this response is the fact that RBOC EBITDA margins are reportedly around 40%. UBS Warburg Telco Wake Up Call - Tuesday, January 7, 2003.

[7] Indications that price is the real issue arc clear from SBC's Christmas Eve filing in Illinois *to* increase unbundled loop prices by 135% to 350%, depending upon the zone.

[8] This consideration seems lo be consistent with the evolution of TELRIC as applied at the state level. In its December 24, 2002 TELRIC filing, SBC Illinois relies on these types of **risk** factors to justify substantially increasing pricing for all UNE loops andnonrecurring charges. Thus, if SBC is able to prove that it faces increased risk due to competition, then the result would be an increase in UNE pricing.

will provide investment incentives for all carriers and promote the development of effective, facilities-based competition for the entire range of integrated service offerings.

2. Defining Network Access Rights Based on a Static "Snapshot" of Current Network Capacity is Impractical and Will Increase Uncertainty.

The concept of attempting to take a "snapshot" of the network for the purpose of defining limitations on network access raises very significant practical and policy-based difficulties. We have considered this approach, bnt believe that it would be very complex; would increase uncertainty; would perpetuate current problems with receiving loops of equal quality to those used by incumbent carriers; and could lead to unintended consequences

- The telecommunications network, including the customer connection portion of the network, is continually evolving for reasons largely unrelated to the deployment of new services. The introduction of fiber and Digital Loop Carrier equipment into loop plant started as the result of sound cost decisions made by incumbent carriers long before any plans for broadband internet access. That new plant is less expensive to install, easier to maintain, and provides a higher quality of service; and these advantages would exist even if no broadband services were offered. To eliminate access to certain types of equipment based on a "snapshot" of the existing network is to deny competitors the benefits of this natural network evolution, and relegate them to a less efficient and less reliable narrowband-only network, thereby placing them at a severe competitive disadvantage.

- There is no adequate way to describe what is "existing" in today's network, and attempting to do so would lead to increased legal and operational complexity that could paralyze both suppliers and purchasers of unbundled loops. A few examples of the questions that would arise are the status of spare copper loops (in place but not in service), the treatment of fiber deployed but not terminated, access to plant installed to serve new developments, and installation of new DLC equipment connected to existing copper or fiber plant. Issues such as these would arise virtually every time a CLEC attempted to order an unbundled loop. We believe that it would take years to work through these sorts of issues. and that both competition and network investment would stagnate in the interim.

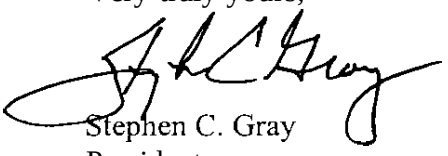
- The "capacity" of the existing network depends in large part upon the current configuration of that network, which can be changed with relative ease. This is clearly the case for portions of the network which are fiber-based, where the optronics at the ends of a fiber cable determine the capacity of the fiber itself. It is also true for traditional copper plant, however. For example, two analog DS0 two-wire loops can be reconfigured into a TI 4-wire loop, with an increase in capacity from two 64-kbps channels to one 1.544mbps channel. Reconfiguring an existing two-wire loop to provide ADSL service similarly changes the capacity. Any capacity measurement is far too elusive to provide a basis for setting long-term policies regarding network access.

- The proposed distinction between new and existing network infrastructure would open the door wide to interpretation and manipulation by RBOCs. Years after basic loop unbundling rules were adopted, CLECs still encounter discrimination in the quality of the loops that RBOCs provide them. As noted in our letter of December 17, there are over 80,000 existing McLeodUSA lines that we would prefer to migrate to our own switching, but where we anticipate the potential for loop quality problems if we do so because of the RBOC's failure to make loops provided over IDLC available. **A** proposed distinction between new and existing network infrastructure would allow further anti-competitive discrimination when customers try to migrate to CLECs and when CLECs order unbundled network elements.

In summary, proposals to treat parts of the integrated network differently would essentially require incumbent carriers to maintain two "separate" networks. The result would be increased maintenance and operational expenses, which would be passed along to both retail customers and wholesale purchasers of network elements. Most significantly, however, one network –the one that competitors could use – would by definition be the "inferior" network (even for narrowband services), leaving competitive service providers access only to the inferior network and unable to offer effective choices to consumers. Under this scenario, effective competition could not exist and both the goals of – and progress under – the Telecommunications Act would effectively be undermined. Instead of fostering development of competition, McLeodUSA believes that adoption of such an approach would merely serve to create further uncertainty, which would much more likely destroy rather than promote competition.

McLeodUSA firmly believes in the competitive future of telecommunications, and that network investment will result from effective competition in all markets. We hope that we have presented constructive suggestions for your consideration in resolving the critical issues before you, and are ready to discuss our ideas at your convenience. Thank you for your consideration.

Very truly yours,



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